

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1, 2, 4-12 and 14-21 are now present in this application. Claims 1 and 10 are independent.

Amendments have been made to the specification, claims 3 and 13 have been canceled, claims 1, 2, 4-7, 10, 12 and 14-17 are amended, and claims 20 and 21 are added. No new matter is involved.

Reconsideration of this application, as amended, is respectfully requested.

Priority Under 35 U.S.C. § 119

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119, and receipt of the certified priority document.

Objection to the Drawings

The Examiner has objected to the drawings because the drawings do not show items 4, 21 and 611b, which are described in the main body of the specification.

In order to overcome this objection, Applicants are concurrently amending the specification to change "4" to --5-- in paragraph [0013]; to change "21" to --11-- in paragraphs [0010] and [0011]. The amendment to paragraph 13 is consistent with the labeling of the drain hose as element 5 in paragraphs [0017] and [0018], and with the labeling of the motor as element 4 in paragraph [0007]. Also, element "611b" in [0055] has been added to Figure 6, a replacement

version of which is provided. Based on these amendments, the drawings and the specification are consistent.

Accordingly, reconsideration and withdrawal of this objection are respectfully requested.

Specification Amendments

Applicants have amended the specification in order to make it consistent with the drawings, as explained above.

Rejection Under 35 U.S.C. § 102

Claims 1, 2, 6, 7, 10-12, 16 and 17 stand rejected under 35 U.S.C. § 102(a) as being anticipated by the admitted state of the art (ASA). This rejection is respectfully traversed.

During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent.

Applicants respectfully submit that the PTO has failed to meet this burden.

A prior art reference anticipates the subject matter of a claim when that reference discloses every feature of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) and Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed Cir. 1997). While, of course, it is possible that it is inherent in the operation of the prior art device that a particular element operates as theorized by the examiner, inherency may not be established by probabilities or

possibilities. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Independent claims 1 and 10, as amended, are not disclosed by the prior art shown in Applicants' Figs. 1-4. Claims 1 and 10, as amended, positively recite a combination of features including a drain hose holder having an entrance and a guide part extending inside the cabinet and having an inverted S-shaped vertical cross-section so that the upper portion of the guide part is bent inward to facilitate insertion of the drain hose therein and to guide the hose downward.

Figs. 1-4 clearly do not disclose this feature. Instead, Figs. 1-4 disclose a guide part that (1) has a completely concave cross section, instead of the recited S-shaped cross section, and (2) is completely devoid of an upper portion that is bent inward to facilitate insertion of the drain hose, as claimed.

With regard to dependent claims 2, 6, 7, 11, 12, 16 and 17, Applicants submit that these dependent claims depend, either directly or indirectly, from either independent claim 1 or independent claim 10, which are allowable for the reasons set forth above, and therefore claims 2, 6, 7, 11, 12, 16 and 17 are allowable based on their dependence from either independent claim 1 or 10.

Reconsideration and allowance of claims 1, 2, 6, 7, 10-12, 16 and 17 are respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 3-5, 8, 9, 13-15, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over ASA. This rejection is respectfully traversed.

Because the rejection is based on 35 U.S.C. § 103, what is in issue in such a rejection is "the invention as a whole," not just a few features of the claimed invention. Under 35 U.S.C. § 103, "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under section 103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. See In re O'Farrell, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the Examiner must explain what the differences between the claimed invention and the prior art are and provide objective factual evidence to support a conclusion that it would be obvious to one of ordinary skill in the art to achieve the claimed invention, which includes those missing features.

In the second place, in rejecting claims under 35 U.S.C. § 103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the

prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. F-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. Note, In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A showing of a suggestion, teaching, or motivation to combine the prior art references is an “essential evidentiary component of an obviousness holding.” C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not “evidence.” See In re Dembiczak, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Moreover, a factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

Initially, Applicants respectfully submit that Applicants' Figs. 1-4 do not disclose the subject matter of claims 1 and 10, from which claims 3-5, 8, 9, 13-15, 18 and 19 depend and, even if modified as suggested, would not result in, or otherwise render obvious, the claimed invention.

Furthermore, Applicants respectfully submit that the office Action fails to make out a *prima facie* case of obviousness of the claimed invention because the rejection is improper for a number of other reasons.

It is improper to base a rejection on the broad, general principle quoted above, which is incorrect in the sense that it does not address a shape that significantly affects the operation of the device, and is not clear and particular objective factual evidence which would motivate one of ordinary skill in the art to modify Figs. 1-4 to redesign and reconstruct Figs. 1-4 to provide the recited shape. Relying on such a statement is inconsistent with the principles set down by "Graham v. John Deere," and "In re Lee" and "In re Dembiczak," and makes this rejection fundamentally improper.

Moreover, the reliance on the stated holding in this "In re Dailey" case provides no objective evidence of the desire of one of ordinary skill in the art to redesign the fundamental structure of Figs. 1-4 in such a counter-intuitive manner.

Additionally, the Office Action fails to explain how this fundamental redesign of Figs. 1-4 which deals with the operational aspects of the device of Figs. 1-4, relates to the facts in "Dailey." Two of the claims in issue in the "Dailey" case were claims 27 and 28. The court

stated, in that decision that claim 27, while defining no particular nipple opening structure, recites the configuration of the top and bottom sections of the container as that of "a portion of a sphere less than a hemisphere." In claim 28, the central angle of those spherical portions is about 80°. The court further noted that one of the applied references, Matzen, discloses that the flexible portion of his container is drawn into the rigid top portion, filling the space thereof, and indicated that Appellants presented no argument which convinced the court that the particular configuration of their container is significant or is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing mating surfaces in the collapsed container of Matzen, citing Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459. (In re Dailey, 149 USPQ 47 (CCPA)).

Applicants respectfully submit that the facts in "Dailey" differ substantially from the facts in this Application, where there is no objective factual evidence presented that one of ordinary skill in the art would be properly motivated to change the shape of the prior art drain hose holder. The Office Action even fails to provide objective factual evidence of a problem in the prior art that needs to be solved. In this regard, Applicants' disclosure of a problem in the prior art cannot be used against Applicants, as that is not in the prior art, but is part of Applicants' disclosure that cannot be used against them. To do so would be improper hindsight reconstruction of the invention based solely on Applicants' disclosure.

Furthermore, The Office Action assumes a *per se* rule that changes in shape are always obvious. As stated by the Federal Circuit in In re Ochiai, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), "reliance on *per se* rules of obviousness is legally incorrect and must cease."

Further, with respect to claims 8, 9, and 17-19, the office Action relies on “In re Harza” for the proposition that duplication of parts is obvious.

Applicants respectfully submit that reliance on this case is wholly inappropriate by terms of the USPTO’s own Board of Patent Appeals and Interferences decisions. In this regard, Applicants reproduce the following statements from the Board’s decision in Ex parte Granneman, 68 USPQ2d 1219 (BPAI 2003):

The examiner argues, in reliance upon In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), that an additional reactor in Zinger’s processing chamber would be a mere duplication of parts and, therefore, would have been obvious to one of ordinary skill in the art (answer, page 6).

The court in Harza stated that the only difference between the reference’s structure for sealing concrete and that of Harza’s claim 1 was that the reference’s structure had only a single rib (i.e., arm) on each side of a web, whereas the claim required a plurality of such ribs. *See Harza*, 274 F.2d at 671, 124 USPQ at 380. The court stated that “[i]t is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced, and we are of the opinion that such is not the case here.” *Id.*

The examiner does not compare the facts in Harza with those in the present case and explain why, based upon this comparison, the legal conclusion in the present case should be the same as that in Harza. Instead, the examiner relies upon Harza as establishing a *per se* rule that duplication of parts is obvious. As stated by the Federal Circuit in In re Ochiai, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), “reliance on *per se* rules of obviousness is legally incorrect and must cease.”

[1] For a *prima facie* case of obviousness to be established, the teachings from the prior art itself must appear to have suggested the claimed subject matter to one of ordinary skill in the art. *See In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). The mere fact that the prior art could be modified as proposed by the examiner is not sufficient to establish a *prima facie* case of obviousness. *See In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). The examiner must explain why the prior art would have suggested to one of ordinary skill in the art the desirability of the modification. *See Fritch*, 972 F.2d at 1266, 23 USPQ2d at 1783-84.

The examiner argues that one of ordinary skill in the art would have included an additional reactor in Zinger’s processing chamber to permit simultaneous heat

treatment of wafers in two boats and thereby increase the production capacity of the processing chamber (answer, pages 6-7). Zinger, however, uses multiple one-reactor processing chambers rather than multiple reactors within each processing chamber (figure 1). The examiner has not explained why the Zinger reference itself would have fairly suggested, to one of ordinary skill in the art, the desirability of using multiple reactors within a processing chamber rather than using Zinger's multiple one-reactor processing chambers.

For the above reasons we conclude that the examiner has not established a *prima facie* case of obviousness of the appellants' claimed invention.¹

In other words, the Examiner's reliance on this case to establish a *prima facie* case of obviousness of the claimed invention is fundamentally improper.

Additionally, because Figs. 1-4 fail to disclose the claimed guide part feature which affects the operation of the claimed invention, and no objective evidence is shown of such a feature existing in the art, the motivation for modifying Figs. 1-4 to provide that feature must be based on improper speculation and/or impermissible hindsight.

Accordingly, the office Action fails to make out a *prima facie* case of obviousness of the claimed invention.

Reconsideration and withdrawal of this rejection of claims 3-5, 8, 9, 13-15, 18 and 19 are respectfully requested.

Claims 20-21

Claims 20-21 have been added for the Examiner's consideration. Applicants submit that these claims depend from either independent claim 1 or independent claim 10, and are therefore allowable based on their dependence from either claim 1 or 10, which are believed to be allowable for reasons presented, above.

In addition, claims 20 and 21 recite a further feature which is not disclosed or made obvious by the applied prior art.

Additional Cited References

Because the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

Application No. 10/722,456
Amendment dated December 22, 2006
Reply to Office Action of September 22, 2006

Docket No.: 0465-1101P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,



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Amendments to the Drawings

Please replace Fig. 6 and Fig. 7 with the replacement sheet attached hereto.